

ACT Government Submission to the Productivity Commission Review of National Competition Policy Arrangements

Impact of NCP and related reforms to date on the ACT

The ACT believes that National Competition Policy (NCP) has been of benefit to the economy at both the State and Commonwealth level as evidenced by positive growth in national productivity and the higher growth in average incomes – a cumulative increase averaging about \$7000 per household.¹

While many reforms would likely have occurred through the ACT's representation on national forums, by linking the reforms to NCP funding, the reforms were most likely identified and completed quicker. The legislative review component of NCP also resulted in ancillary reforms being identified in the course of the reviews, and an increased awareness and understanding of the principles of the NCP reforms and the public benefit test.

The Territory has been exemplary in its NCP reform commitments, through:

- applying NCP principles in prices oversight of GBEs;
- ensuring competitive neutrality;
- undertaking structural reform of public monopolies;
- nominating its entire stock of legislation for legislative review; and
- providing access to infrastructure facilities in accordance with third party requirements.

In meeting its obligations, the ACT has committed many resources in undertaking the full range of reform activities. Due to its smaller size relative to other jurisdictions, however, diseconomies of scale have resulted in the ACT achieving fewer gains given the costs of reform compared to other States. Disadvantages have manifested themselves through:

- a lack of diverse business and industry sectors to take advantage of reforms;
- the administratively complex and resource-intensive nature of government service provision associated with microeconomic reform;
- the high fixed costs of microeconomic reform administration resulting in high per capita costs to the ACT; and
- the costs of reform being borne by the ACT while the benefits tend to be exported.

¹ *Micro Reform's Productivity Payoff*, Productivity Commission, Australian Government, 2002

Financial implications

While the NCP tranche payments were to recompense States and Territories for lost income from previous monopoly service provision, the payments did not cover the cost of the reviews and costs of reform implementation. Further, the extent of payments has not been sufficient to address the costs related to structural change. For example, taxi licence buy-backs, while offering a rapid and acceptable reform of the industry were prohibitively expensive and tranche payments did not come close to covering payouts necessary to achieve reform. As a consequence, the ACT has expended numerous resources on reviews and the associated investigation of alternative reforms paths to nil effect and the industry continues to be characterised by regulation, supply-demand distortions and uncertainty. In addition, reform benefits can take a long time to flow through the economy and this aspect of structural change also inhibits the undertaking of reforms.

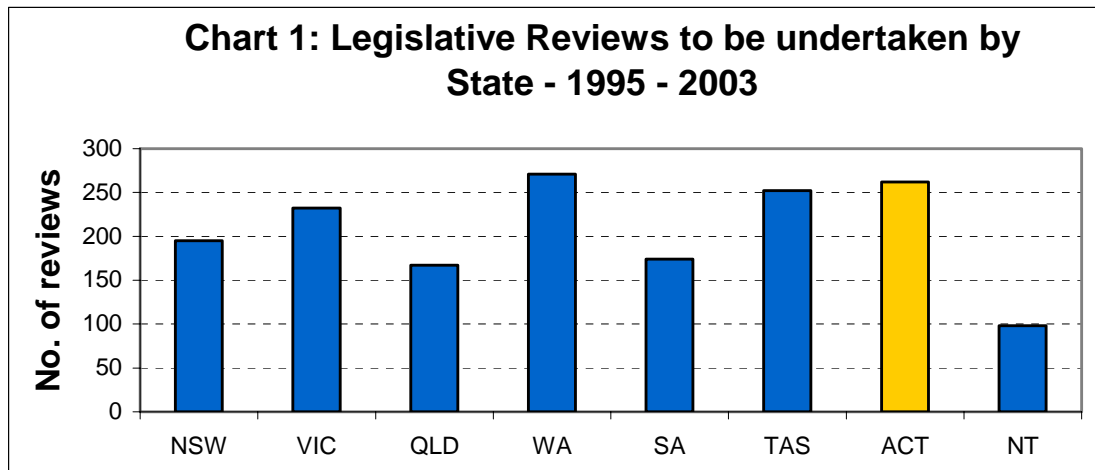
Mechanisms to speed up the flow on of benefits or otherwise address the time lag between reform costs being incurred and benefits being experienced would expedite deregulatory undertakings. Upfront, or additional, payments provide the most effective incentive in this regard. The issue of tying specific payments to specific reforms would, however, need to be addressed.

The ACT's narrow economic base has resulted in the Territory missing out on primary benefits achieved through reforms as reflected by the level of competition payments, although second-level or 'flow-on' benefits have been attained through reforms in upstream markets and productivity gains achieved at the level of the national economy.

The following examples are illustrative of the disadvantages the ACT faces in meeting its reform obligations.

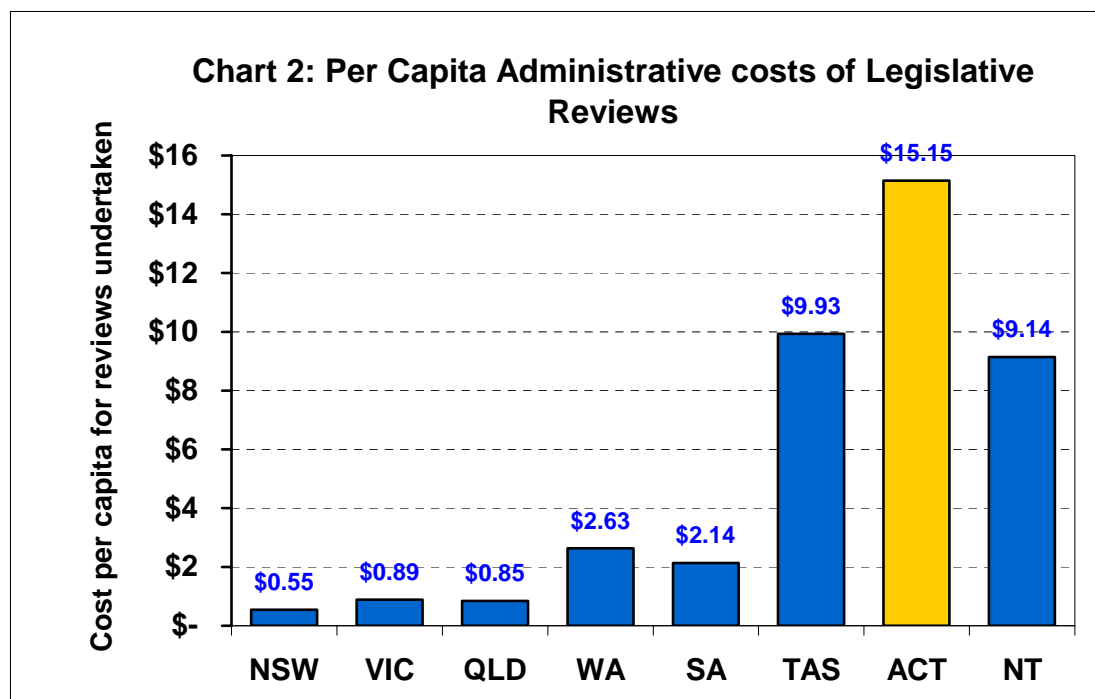
(a) Legislative reviews

A review of all existing legislation has been undertaken in accordance with Clause 5(1) of the Competition Principles Agreements. The ACT was obligated to review significant amounts of legislation inherited from the Commonwealth at the time of self-government. By 2003, the ACT had conducted 262 legislative assessments and/or reviews, almost the highest amount among jurisdictions (see Chart 1).



(Source: National Competition Council (2002) *Legislation Review Compendium*, 4th Edn, Feb 2002, AusInfo, Canberra)

The ACT has calculated that the approximate average cost of a review is \$18,650. At \$15.15 the ACT incurs the highest per capita cost of legislative reviews amongst all jurisdictions (see Chart 2).

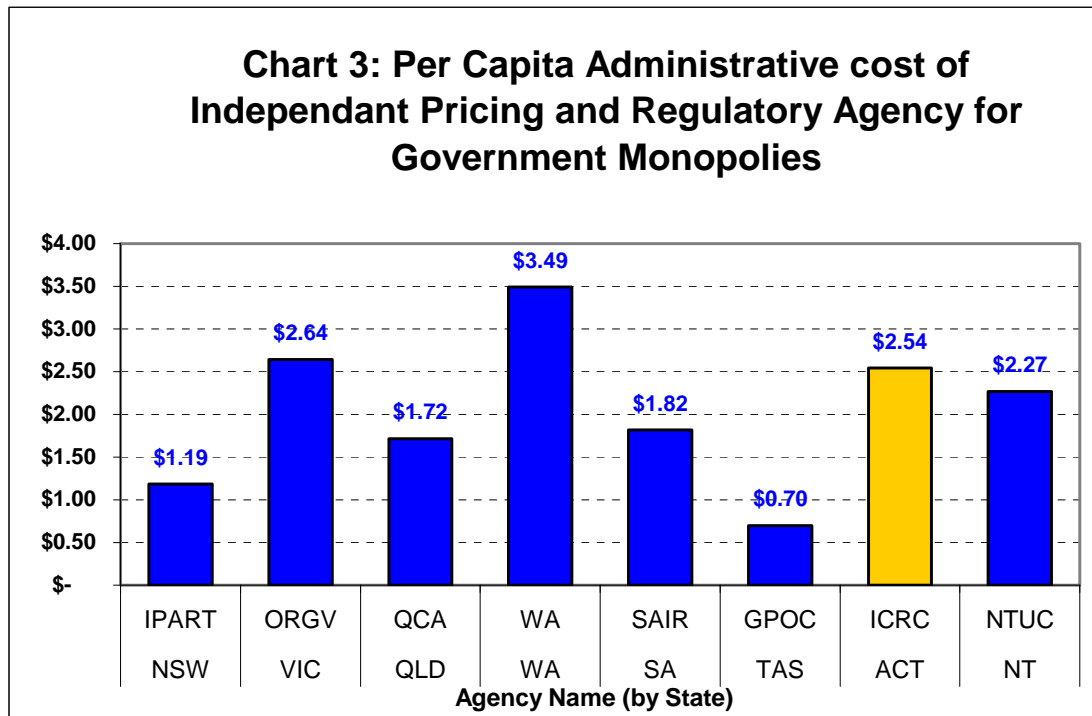


(b) Establishment of Independent Regulatory agency

In accordance with Clause 5(1) of the Competition Principles Agreements, jurisdictions were required to establish an independent agency to regulate pricing and manage access arrangements and competitive neutrality complaints for industries in which Government companies or monopolies existed. In the ACT, the Independent Competition and Regulatory Commission (ICRC) was established in 1997 to carry out these functions.

Matters dealt with by the ICRC are similar to those faced by the independent regulatory bodies in other states, both in terms of the nature of the issues and the functions performed in their examination.

However, the ACT is subject to much higher per capita costs to maintain its regulatory agency as a result of the fixed administrative costs incurred by the ICRC. The per capita administrative costs of the ICRC are \$2.54 compared to an Australian average of \$2.05 (see Chart 3).



NB: Western Australia has a higher cost due to the multi-agency administrative structure adopted.

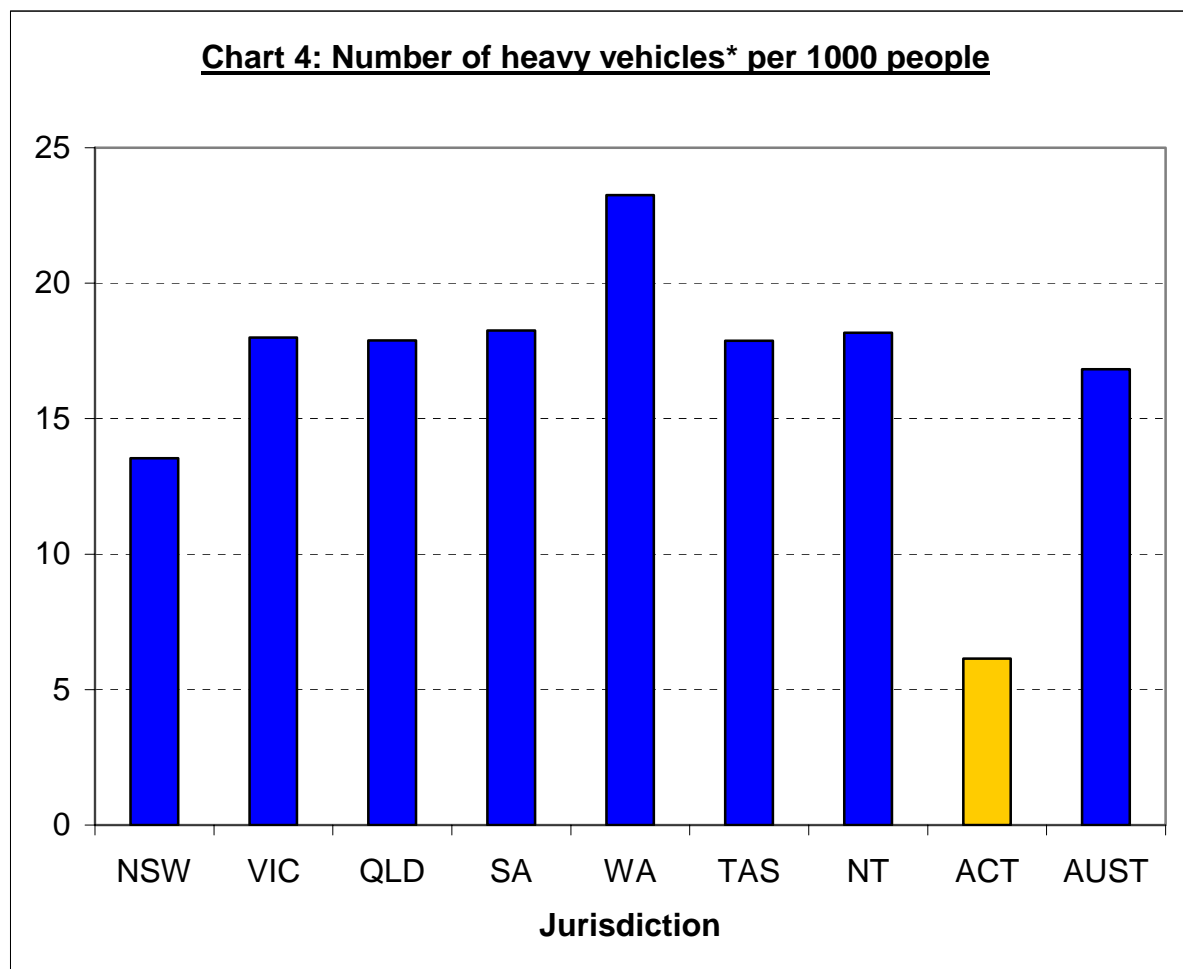
Accordingly, the ACT believes that it is important to note that NCP has been a relatively costly exercise in terms of financial and human resource expenditure as well as in time taken to implement components of the program. The ACT would expect there to be recognition of this fact if NCP is to be continued into the future and assistance provided through appropriate funding.

National reform - Continuous registration for heavy vehicles

The ACT acknowledges the merit in pursuing particular reforms at the national level, in the interest of achieving consistent laws and regulations across States and Territories and removing costs to new and existing businesses. Similar to internal matters, however, it needs to be recognised that the cost of undertaking such reforms are disproportionately more expensive for the ACT to pursue.

This is demonstrated in the case of national road transport reform. The National Transport Council (NTC) prescribed a guideline for the implementation of 'continuous registration' for heavy vehicles in all jurisdictions, the policy objective of which is to keep unregistered and uninsured vehicles off the road.

Currently, there is a single computerised system, *Rego.act*, for registering both heavy and light vehicles in the ACT. By any measure there are few ACT-registered heavy vehicles. For example, the ACT is 1.6% of the Australian population but has only 0.6% of the heavy vehicles. Similarly, the ACT has only just over six heavy vehicles per 1,000 people, which is less than half the NSW figure of 13 and almost a third of the Australian average of 17 (see Chart 4). Consequently, as a small jurisdiction with a relatively small client base for heavy vehicle registrations, the per-unit cost of establishing a separate registration system for heavy vehicles is prohibitively expensive.



(Source: Australian Bureau of Statistics, Motor Vehicle Census 31 March 2003 (9309.0) and Australian Demographic Statistics (3101.0))

* Comprises both heavy rigid trucks and articulated trucks. A heavy vehicle is defined as 'a motor vehicle or trailer with a GVM (gross vehicle mass) of more than 4.5 tonnes'. Heavy rigid trucks are those with a GVM of more than 4.5 tonnes.

Altering *Rego.act* to permit continuous registration would also flow on to passenger vehicles. In addition to being an expensive exercise, with system changes estimated to cost approximately \$232,000 for initial software, testing and parallel operation and ongoing running and administration costs of \$130,000 per annum, the changes have an additional negative effect. The ACT has a single compulsory third-party insurer and the nexus between continuous registration and insurance is problematic as premium costs would be backdated but coverage would not.

This reform initiative is a prime example of benefits being very wide and dispersed (primarily beyond the ACT's borders) while the costs are particularly high and focussed. Indeed, at an aggregate level benefits may be marginal as interstate heavy vehicle traffic tends to bypass, rather than transit through, the ACT. It is within this context that the ACT believes future reform should only occur where there is a clear benefit to the Territory. Where diseconomies of scale apply to the ACT or other jurisdictions, the NCP payments system should give due recognition to this and allow for additional financial assistance in undertaking and implementing reforms.

Alternative paths to achieving reform

The issue of continuous registration of heavy vehicles also raises the issue of flexibility in the NCP assessment process. That is, jurisdictions may be able to undertake regulatory alterations that, while not assessed as strictly meeting NCC reform compliance, nevertheless achieve meaningful improvements to regulatory regimes. This consideration is particularly important given that:

- the ACT has experienced minority government since the inception of self-government in 1989 and policy or administrative action to achieve reform is a pursuit more likely to be successful rather than legislative change, which can be frustrated through lack of sufficient majority support in the Legislative Assembly; and
- the financial costs of the NTC reform path against which the NCC is assessing the ACT are significant.

In the case of continuous registration of heavy vehicles, the ACT has clearly undertaken its best endeavours in the life of two governments to implement reform, but has not succeeded. Alternatives have been examined to achieve the policy objective of keeping unregistered and uninsured vehicles off the road, including non-coercive measure (educational programs and additional reminder notices), increased deterrence and enforcement (fines) and technological innovation (road sensors and cameras). Despite not meeting the NTC reform requirement, these options are nevertheless more than capable of achieving reform outcomes and NCP should have an outcomes-focussed bias that recognises the potential of utilising alternative measures.

Accordingly, the ACT believes that reform assessments must not be doctrinaire or otherwise based on a too-narrow and exclusionary definition of 'reform' (see further discussion under 'NCC assessment' on page 8-9).

Marginal benefits of reform

While the ACT has invested considerable human and financial resources into all aspects of the NCP program, the investment for some reforms has been particularly large but are likely to return only marginal benefit. The ACT's taxi and hire car sectors and architectural and building professions have been the subject of a number of reviews under NCP, had wide-ranging consultation and undergone extensive policy and legislative development. Reform outcomes from these undertakings are not expected to deliver significant gains for consumers in relation to the funds expended on review and reform activities and major achievements may, in fact, merely be symbolic.

The ACT recognises that there is merit in pursuing reforms that are large in scope and/or have significant symbolic value, however, the disproportionate costs-to-benefits of review and reform should be assisted through additional Commonwealth payments to jurisdictions.

Maintaining a reform culture

The ACT believes that instilling and maintaining a reform culture in jurisdictions is necessary to ensure reforms achieved under the current NCP program are not 'unwound' and that governments are inclined to continue or extend NCP into other sectors.

This may require a shift in the operations of the National Competition Council from its current focus of assessment to one of review or oversight of NCP reforms that have been undertaken. Similarly, the NCC may in future have an emphasis on being a source of advice to jurisdictions in progressing regulatory reforms and providing guidance on developments in regulatory best practice. Intergovernmental forums that allow the sharing of experience and advice play a useful role and the NCC is well positioned to act as a facilitator in this regard.

Extension of NCP within States and Territories

The ACT believes that any extension of NCP principles to new areas, such as health, education and community services, should be done with some care.

In the area of school education, for example, while it is unclear what the application of NCP might mean in practice, there are a number of points that the ACT would highlight:

- It is essential that the public interest test be applied rigorously to proposals regarding government education as this currently provides the only high quality education that is accessible to *all* members of the community.
- The increase in non-government school enrolments over recent years would indicate the success of that sector under current funding arrangements and would suggest that the market is open to competition.

In the area of training, many of the same issues could be raised as for school education. In addition, there are a number of areas of professional training provision where the private sector competes successfully with the government sector, e.g. information and communication technology, however, competitive neutrality obligations are required to ensure this market operates without competitive distortions. Implicit in this argument is that where sectors are identified that do not possess the characteristics of freely operating markets, they should be sufficiently scrutinised to determine whether or not NCP principles should be applied.

There are many effective government/non-government partnerships in community, family and children's services, and while there may be some scope for application of NCP principles, some of these services – the protection of children, for example – must remain the responsibility of government.

Health, education and social services are regarded as key delivery responsibilities and care should be exercised to ensure that the introduction and/or extension of competition into these areas is subject to rigorous application of the public benefit test to ensure appropriate government oversight.

Application of NCP to the Commonwealth

The ACT notes that there is a necessity to ensure reform continues or is introduced into areas of national concern or with a multi-jurisdictional dimension in recognition that national markets increasingly require national approaches to coordination and that benefits to consumers can only be achieved by de-regulation at the national-level. Explicit in this concern is that the Commonwealth has an obligation to play its part in undertaking necessary reforms.

Significant benefits can be achieved through a more rigorous application or extension of NCP into sectors that are the preserve of the Commonwealth, i.e. broadcasting, postal services, Commonwealth-industry agreements such as the Australian Pharmacy Agreement underpinning PBS dispensing rights).

As a signatory to the NCP agreements, the Commonwealth has been subject to reform obligations, however, the commitment shown to their undertakings in this regard has been less than enthusiastic. Legislative reviews have identified significant competitive restrictions that have not been removed through subsequent reforms. Consequently, consumers are being denied the benefits that the introduction of competition into those sectors would bring.

Fundamental to this lack of reform is the fact that the Commonwealth does not face the financial incentives provided for by competition payments and is less inclined to undertake effective reform activities as a consequence.

Accordingly, the ACT suggests that, to provide an inducement to undertake meaningful reform, competition penalties should be applied to the Commonwealth whereby they are required to pay additional funds to jurisdictions as compensation for the maintaining of competitive restrictions in sectors of the economy under the Commonwealth's control. Jurisdictions are then in a financial position to ameliorate the costs of maintaining restrictions by passing on compensation to their constituents in the form of reduced rates and fees or increased expenditure on public services.

Commonwealth sectors with particular restrictions include communications and pharmacy.

(a) Broadcasting

The Productivity Commission review of broadcasting undertaken in 2000 identified numerous competitive restrictions, the removal of which would have huge benefits for the wide range of interests represented in Australia. Controls on spectrum allocation, broadcasting restrictions (including prohibition of entry and bans on multi-channelling and datacasting) and 'anti-siphoning' provisions for sporting events, have severe negative impacts on consumers, regional Australians, sporting organisations, indigenous communities and economic development overall and give rise to calls for compensation.

(b) Pharmacy agreement

Similarly, the Commonwealth's agreement with the Pharmacy Guild of Australia, the *Australian Community Pharmacy Agreement*, sets out a number of rules that restrict pharmacy relocations and new pharmacy approvals. The NCC assessment of the Commonwealth's approach noted that there were significant anti-competitive affects for consumers and that phasing out of these controls should be a public interest priority. In the meantime, costs borne by consumers should be acknowledged through a compensatory competition payment to the States and Territories applied to the Commonwealth.

(c) Transport

New regulatory reforms undertaken in existing sectors have the potential to lead to efficiencies, increase operations and economic activity in upstream and downstream markets and, consequently increase Commonwealth tax revenues. The ACT believes that, to the extent that those reforms will be undertaken and implemented at the State/Territory level, jurisdictions would naturally expect a share of these benefits through additional payments similar to the funds received under the current NCP program. For example, the National Transport Commission's *Strategic Directions in 2005/06 to 2007/08*:

Discussion Paper foreshadows a number of initiatives that will result in jurisdictions incurring costs for furthering reform, such as development of national codes of practice and greater cooperation between enforcement agencies. These State/Territory costs should be recognised and compensated through a corresponding efficiency dividend. The NCC could continue with its current assessment role to determine if reform activity at the State/Territory level is being satisfactorily achieved.

NCC assessment

The ACT believes that the transparency, detail and quality of NCC assessments need to be enhanced to ensure jurisdictions are made aware of the details of decisions affecting NCP payments. This is particularly important where differences of opinion occur between jurisdictions and the NCC on the application of public interest arguments.

The most recent assessment of the jurisdictions' progress in NCP implementation recommended payment suspensions and permanent deductions. While the assessments provided general information on the rationale for the NCC's recommendations, they were lacking in detail as to how individual reform items contributed to an overall decision on payment suspension/deduction amounts. Accordingly, information provided by the NCC to States and Territories, prior to payment recommendations being finalised, will give jurisdictions a better idea as to where reform should be targetted. This could occur through the provision of greater detail in the NCC's forward work program provided to CoAG at six-monthly intervals and be reinforced through officer level discussions between NCC officials and competition policy unit staff.

Similarly, NCC assessment decisions require particular explanation in the event of negative assessments. The ACT's experience on the issue of its review of the *Agents Act 1968* provides a case in point.

Following the passage of the *Agents Amendment Act 2000* in the ACT Legislative Assembly on 1 March 2000, employment agents were required to be licensed. The rationale for licensing employment agents was based on sound public interest justifications, namely protecting the financial interests of unemployed people using agency services and ensuring probity within the industry. Controls regarding place of work were cited as a significant restriction on agents' capacity to operate in the ACT these were removed in the new *Agents Act*.

In addition, other administrative red tape requirements on the industry were removed or lessened, including substantially reducing licence fees in line with those charged in other industries based on a cost recovery basis. Currently, there is no distortion within the market and no evidence that employment agents are constrained by the costs associated with the licensing requirement. There have been no complaints about inappropriate market conduct concerning unemployed people being charged for employment services since the regulation of this industry was introduced.

Amendments to the CPA endorsed by CoAG in December 2000 require the NCC's assessment as to whether jurisdictions have met their commitments under clause 5(1) of the CPA be guided by the following amendment to the CPA.

"In assessing whether the threshold requirement of clause 5 has been achieved, the NCC should consider whether the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process. Within the range of outcomes that could reasonably be reached, it is a matter for Government to determine what policy is in the public interest."

Despite the ACT's sound application of public interest considerations and the clarifications required by CoAG in respect of meeting Clause 5(1) requirements, the NCC negatively assessed the Territory's reform proposal. The NCC's position in this regard would appear to be at odds with the intent of CoAG's clarification and places a particular obligation on the Council to explain its recommendations, especially where they refute public interest arguments proposed by jurisdictions.

The ACT believes that the public interest test is fundamental to allowing different values to be considered in reform matters. This case described above, however, highlights concerns that NCC assessments have not always properly considered the Territory's public interest arguments in support of restrictions and this may be due to a doctrinaire belief as to what constitutes reform. Accordingly, the ACT suggests that the guidance offered by CoAG in December 2000 be given greater weight in NCC assessments and that, in the case of negative judgements, a formal process be initiated to allow jurisdictions the opportunity to argue their case.

In addition, the issue of assessment raises another concern of the ACT, namely, consistency of assessment of national reforms amongst jurisdictions. The NTC requirements for continuous registration have not been implemented consistently across all jurisdictions, yet the ACT is the only government singled out as having incomplete reform (see Attachment A). Accordingly, if the NCC, or any other body, is going to be charged with assessing future national-level reforms, the ACT expects that there will be consistency in evaluation with sufficient justification provided where differential assessments are recorded against particular jurisdictions' progress.

Attachment A

Application of NTC Continuous Registration for Heavy Vehicles Guidelines

Key elements of the NTC guideline are:

- Registration must be paid in full (no provisions for payment by instalments);
- Registration paid late but within 3 months of expiry must be backdated to the original expiry date but this must not retrospectively validate a period of unregistered use;
- If registration is not renewed within 3 months of expiry, the registration may no longer be renewed and plates must be returned or can be seized
- Part year registration can be approved by the Registration Authority but if registration is not renewed within 12 months of expiry of the approved registration period, the plates must be surrendered.

Arrangements in the various jurisdictions are as follows:

- Tas** does not apply the NTC guideline. It does not have continuous registration except where payment is made within 28 days of expiry. Critically, the CTP legislation in Tas provides for a 28-day grace period of cover where registration is renewed late, and where registration is renewed within the 28 days, this appears to retrospectively validate the registration. Where it is made outside that period but within 3 months of expiry, registration renewal runs for the full period for which payment is made from the date it is made.
- WA** does not apply the NTC guideline. If registration is renewed within 15 days of expiry, which is the insurance 'grace period' for renewal, registration is backdated until the day after expiry and appears to be retrospectively validated for that period. If registration is renewed more than 15 days after expiry, registration takes effect for the full period paid (6 or 12 months) from the day it is renewed.
- Qld** has not fully implemented the guideline. Registration can only be renewed within 2 months of its expiry, but registration is backdated (i.e. the cost is backdated) but not retrospectively validated for the late period. There is a 30-day grace period provided for insurance cover.
- NT** has not implemented the guideline. Where registration is renewed after expiry, it comes into force on the date it is renewed. There appears also to be no requirement to return plates if registration is not renewed within 3 months of expiry.
- SA** has largely implemented the guideline. There is an insurance grace period for late renewals.

Vic has implemented the guideline.

NSW has implemented the guideline. There is no insurance grace period for late renewals.